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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

MOLDEX-METRIC, INC., a  
California corporation,

Plaintiff,

v.

MCKEON PRODUCTS, INC., a  
Michigan corporation,

Defendant.

;

CASE NO. 11-cv-01742-CBM (AGRx)

**CONSENT JUDGMENT AND  
PERMANENT INJUNCTION  
[JS-6]**

1       The Court having read and reviewed the parties' Stipulation to Consent  
2 Judgment and Permanent Injunction, IT IS HEREBY ORDERED, ADJUDGED  
3 AND DECREED as follows:

4       1.     Moldex owns the bright green trademark used with Moldex's earplug  
5 products as shown in Exhibit 1 hereto (the "Green Color Trademark").

6       2.     McKeon has made, exports, imports, offers for sale, sells, advertises  
7 and/or markets earplug products with bright green colors, examples of which are  
8 shown in Exhibit 2 (the "Accused Products") in the United States.

9       3.     Moldex's Green Color Trademark is valid and enforceable with respect  
10 to all past, present, and future McKeon bright green earplug products in the United  
11 States, and the Accused Products, are likely to cause confusion under the U.S.  
12 Trademark Act in the United States.

13       4.     McKeon acknowledges that Moldex's Green Color Trademark has been  
14 marketed for over 35 years and has acquired secondary meaning among buyers of  
15 bright green earplugs in the United States as a source identifier for Moldex's earplugs  
16 and distinguishes Moldex's earplugs from the earplugs sold by others.

17       5.     Except as provided in the confidential Settlement Agreement between  
18 the parties, McKeon and its officers, directors, agents, servants, employees, attorneys,  
19 assignees, and all persons or entities in active concert or participation with, through,  
20 or under McKeon are hereby permanently enjoined from knowingly, directly or  
21 indirectly, (1) making (or having made for them), offering to sell, selling, exporting  
22 into Canada, importing, advertising and/or marketing the Accused Products and any  
23 other earplugs comprised in whole or in part of a bright green color that is likely to  
24 cause confusion under the U.S. Trademark Act with Moldex's Green Color  
25 Trademark in the United States; and (2) assisting, aiding, or abetting any other person  
26 or entity in or performing any of the activities referred to in (1).

27       6.     This Court shall retain jurisdiction of this action for the sole purpose of  
28 enforcing this Consent Judgment and Permanent Injunction.

1        7. Each party to this Action shall pay its own attorneys' fees and costs in  
2 connection with the resolution of this Action. In any action to remedy, prevent or  
3 obtain relief under this Consent Judgement and Permanent Injunction, the prevailing  
4 Party shall be awarded his, her, or its reasonable attorneys' fees and costs.

5        8. No appeal shall be taken by any party from this Consent Judgment and  
6 Permanent Injunction, the right to appeal being expressly waived by all parties.

7        9. To the extent not specifically addressed herein, all claims, counterclaims,  
8 and affirmative defenses are dismissed with prejudice. This Consent Judgment and  
9 Permanent Injunction concludes this action.

10       The Clerk is directed to enter this Consent Judgment and Permanent Injunction  
11 without further notice.

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14 DATED: September 13, 2019

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18 Hon. Consuelo B. Marshall  
19 United States District Judge  
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